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8 NOT FOR CITATION
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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12 RUSSELL GENE RODRIGUEZ,

No. C 07-02235 JF (PR)

13 Petitioner,

ORDER GRANTING MOTION TO
REOPEN FILE; TO SHOW CAUSE

14 v.

15 JEANNE WOODFORD,

16 Respondent.

17 _____/ (Docket Nos. 11 & 12)
18

19 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254. Petitioner raised three claims: (1) ineffective
21 assistance of counsel; (2) illegal search and seizure; and (3) his sentence was cruel and
22 unusual. The Court dismissed the second claim under Stone v. Powell, 428 U.S. 465, 481-
23 82, 494 (1976), and ordered Respondent to answer to claims one and three. In lieu of an
24 answer, Respondent filed a motion to dismiss for failure to exhaust state remedies with
25 respect to petitioner's claim of ineffective assistance of counsel. Petitioner did not dispute
26 exhaustion, and filed a motion for a stay of the matter so he can return to state court to
27 exhaust the claim. Good cause appearing, the Court granted Petitioner's request and stayed
28 the matter pending Petitioner returning to this Court after exhausting his state remedies.

On August 13, 2008, Petitioner filed a motion to reopen the action with notice of the state high court's decision, as well as an amended petition in accordance with the Court's order. Petitioner has established that his claim of ineffective assistance of counsel is now exhausted. The motion to reopen (Docket No. 11) is GRANTED, and the stay is lifted. Petitioner's motion for ruling (Docket No. 12) is DENIED as moot.

The following claims are cognizable, when liberally construed: (1) ineffective assistance of counsel; and (2) Petitioner's sentence was cruel and unusual. The Court orders Respondent to show cause why the petition should not be granted.

CONCLUSION

1. The clerk shall reopen the case.
2. The Clerk shall serve by mail a copy of this order and the amended petition (Docket No. 11) and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on the Petitioner.
3. Respondent shall file with the Court and serve on Petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving a copy on Respondent within **thirty (30) days** of his receipt of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the court

1 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
2 **days** of receipt of the motion, and Respondent shall file with the Court and serve on
3 Petitioner a reply within **fifteen (15) days** of receipt of any opposition.

4 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
5 the Court and all parties informed of any change of address by filing a separate paper
6 captioned "Notice of Change of Address." Petitioner must comply with the Court's orders in
7 a timely fashion. Failure to do so may result in the dismissal of this action for failure to
8 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

9 This order terminates Docket Nos. 11 & 12.

10 IT IS SO ORDERED.

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12 DATED: 3/10/09

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14 JEREMY FOGEL
15 United States District Judge
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